

**45-DAY INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE OFFICE OF THE STATE FIRE MARSHAL
REGARDING THE 2019 CALIFORNIA REFERENCED STANDARD CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 12
(2018 TRIENNIAL RULEMAKING CYCLE)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS

Government Code Section 11346.2(b)(1) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.

Health and Safety Code Section 18928:

The specific purpose of this rulemaking effort by the Office of the State Fire Marshal (OSFM) is to act accordance with Health and Safety Code section 18928, which requires all proposed regulations to specifically comply with this section in regard to the adoption by reference with amendments to a model code within one year after its publication.

The actions described above are reasonably necessary to carry out the purpose for which it is proposed. The Rationale for these actions is to establish minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in occupancies addressed in the 2016 California Referenced Standard Code and be published as the 2019 California Referenced Standards Code.

The general purpose of this proposed action is principally intended to update and codify a new edition of the California Referenced Standards Code (California Code of Regulations, Title 24, Part 12) based upon a more current edition of a model code. The current California Referenced Standards Code in effect is the 2016 California Referenced Standards Code. This proposed action:

Bring forward previously existing California building standards or amendments, which represent no change in their effect from the 2016 California Referenced Standards Code.

The SFM proposes to maintain the adoption of SFM Standards in Title 24, Part 12,

Referenced Standards Code with modification.

1. Flammability Standards for Building Insulation Materials

Sec. 12- 13-1553 (k)

Rational: Legislation was passed in 2013 that added Section 13108.1 to the Health and Safety Code (AB 127, Skinner Fire safety: fire retardants: building insulation), that requires the State Fire Marshal, in consultation with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, to review the flammability standards for building insulation materials, including whether the flammability standards for some insulation materials can only be met with the addition of chemical flame retardants. The State Fire Marshal convened a working group to assist in the review and provide recommendations regarding the flammability standards for building insulation materials. The recommendation of the workgroup was that more testing of the material was needed to make a determination. The report can be found at:

<http://osfm.fire.ca.gov/codedevelopment/wgfsbim>

The Office of the State Fire Marshal completed Phase II by working with Oklahoma State University (OSU) to evaluate the suitability of non-fire retardant treated polystyrene foam insulation in a subgrade installation. The CAL Fire / OSU Phase II Working Group was formed to determine the testing criteria and evaluate the results. The OSU conducted fire tests for built environment and storage that would be found at construction sites.

The Working Group reviewed the test results and developed the proposals in the California Building Code, California Residential Code, California Fire Code and California Referenced Standards Code. The final report can be found at:

http://osfm.fire.ca.gov/codedevelopment/pdf/CalFire-OSU_Phase_II_Working_Group_Final_Report.pdf

These proposals would allow the use of non-fire retardant treated polystyrene foam insulation board in horizontal applications for frost-protected shallow foundations installed in accordance with ASCE 32, or under a 3.5-inch concrete slab. The proposals were heard and considered by the California Building Standards Commission's Code Advisory Committee (CAC) on Aug 1, 2018, along with public testimony. As a result of the CAC's summary comments and the public testimony, the Office of State Fire Marshall has modified its proposal to address these comments and testimony.

The revised proposals, one for the California Building Code, one for the California Residential Code, and one for the California Referenced Building Standards, would allow the use of non-fire retardant treated polystyrene foam insulation board directly under a minimum 3.5-inch thick concrete slab on grade. Under these conditions, as supported by the OSU testing, there is no fire risk, and the addition of flame retardants provides no fire-safety benefit. The Office of the State Fire Marshal has concluded, also supported by the OSU testing, that polystyrene foam insulation boards without flame retardants would create no more of a fire hazard than other combustible materials commonly found on a construction site. The previous proposals regarding frost-protected shallow foundations

and site storage have been withdrawn.

Response to Code Advisory Committee: The OSFM disagreed with the action advised for long term further study, but did a short term further study with the work group to refine the proposal and to capture the intent that the non-fire treated product is an option when installed beneath a concrete slab.

The actions described above are reasonably necessary to carry out the purpose for which it is proposed. The Rationale for these actions is to establish minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in occupancies that are addressed in the 2018 International Building Code and published as the 2019 California Referenced Standards Code pursuant to Health and Safety Code Section 12000 through 12401 and 12500 through 12725, 13108, 13110, 13113, 13114, 13131.5, 13143, 17921, and 18949.2.

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TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS

Government Code Section 11346.2(b)(3) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

The OSFM did not rely on any technical, theoretical, and empirical study, report, or similar documents outside of those contained in this rulemaking in proposing that California Building Standards Commission adopt said model code as a reference standard for the placement of existing OSFM regulatory amendments for the California Building Standards Codes.

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS

Government Code Section 11346.2(b)(1) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.

The OSFM believes that the amendments to the model code any additional building standards proposed are offered in typically both a prescriptive and performance base. The nature and format of the model code adopted by reference afford for both methods, the

following is a general overview of the model codes proposed to be adopted by reference as well as state modifications:

This comprehensive fire code establishes minimum regulations for fire prevention and fire protection systems using prescriptive and performance-related provisions. It is founded on broad-based principles that make possible the use of new materials and new system designs.

This code is founded on principles intended to establish provisions consistent with the scope of a building and fire code that adequately protects public health, safety and welfare; provisions that do not unnecessarily increase construction costs; provisions that do not restrict the use of new materials, products or methods of construction; and provisions that do not give preferential treatment to particular types or classes of materials, products or methods of construction.

The International Building, Residential and Fire Code provisions provide many benefits, among which is the model code development process that offers an international forum for building and fire safety professionals to discuss performance and prescriptive code requirements. This forum provides an excellent arena to debate proposed revisions. This model code also encourages international consistency in the application of provisions.

CONSIDERATION OF REASONABLE ALTERNATIVES

Government Code Section 11346.2(b)(4)(A) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.

The OSFM has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed adoption by reference with OSFM amendments. Therefore, there are no alternatives available to the OSFM regarding the proposed adoption of this code.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Government Code Section 11346.2(b)(4)(B) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.

The OSFM has made a determination that this proposed action will not have a significant adverse economic impact on small business. Health and Safety Code Section 18928 requires the OSFM, when proposing the adoption of a model code, national standard, or specification shall reference the most recent edition of the applicable model code, national

standard, or specification. Therefore, there are no other facts, evidence, documents, testimony, or other evidence on which the OSFM relies to support this rulemaking.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

Government Code Section 11346.2(b)(5)(A) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

The OSFM has made a determination that this proposed action will not have a significant adverse economic impact on business. Health and Safety Code Section 18928 requires the OSFM, when proposing the adoption of a model code, national standard, or specification shall reference the most recent edition of the applicable model code, national standard, or specification. Therefore, there are no other facts, evidence, documents, testimony, or other evidence on which the OSFM relies to support this rulemaking.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

Government Code Sections 11346.3(b)(1) and 11346.5(a)(10)

The Office of the State Fire Marshal has assessed whether or not and to what extent this proposal will affect the following:

- A.** The creation or elimination of jobs within the State of California.
N/A
- B.** The creation of new businesses or the elimination of existing businesses within the State of California.
N/A
- C.** The expansion of businesses currently doing business within the State of California.
N/A
- D.** The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.
N/A

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

Government Code Section 11346.2(b)(5)(B)(i) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

No increased cost of compliance for those regulations that make only technical and non-substantive changes.

The potential benefits provide recognition and appropriate use of new technologies and materials, clarity for the code users and local enforcement agencies, and may increase business due to the adoption of new building standards.

Protection of life and property against fire and panic.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Government Code Section 11346.2(b)(6) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

The OSFM has determined that this proposed rulemaking action does not unnecessarily duplicate or conflict with federal regulations contained in the Code of Federal Regulations that address the same issues as this proposed rulemaking.